

NIH POLICY MANUAL

55205 SUCCESSOR-IN-INTEREST AND NAME CHANGE AGREEMENTS

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1. **Explanation of Material Transmitted:** This chapter states the NIH's policy with regard to the following actions: (1) formal recognition of a new grantee organization as the **successor-in-interest** to the assets included in grant-supported activities, and (2) formal recognition of a **name change** that does not affect the rights and obligations of the original grantee. This issuance differs from the previous chapter in that the procedures have been refined, and the three-party document known as the "Successor-In-Interest Agreement" (PHS Grants Administration Manual, Appendix 133-A) is no longer required. Further, legal action recognized by the NIH as a "merger" has been addressed, including the applicability of these procedures thereto.

2. **Filing Instructions:**

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- Content of this chapter, contact the issuing office listed above.
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A. **Purpose:** This issuance states the NIH's role in the following actions: (1) formal recognition of a new grantee organization as **the successor-in-interest** (SII) to assets included in NIH grant-supported activities, (2) formal recognition of a name change that does not affect the rights and obligations of the grantee, and (3) mergers, i.e., those legal actions that result in the unification of two or more legal entities. When such actions involve the transfer of assets, the procedures for the recognition of successor-in-interest will generally apply. When such actions do not involve the transfer of assets, procedures for the recognition of name change will generally apply.

B. **Background:** Formerly, when an SII or name change affected grants from more than one Institute or Center (IC), the responsibility for processing such actions resided with Division of Grants and Contracts, in the Office of the Assistant Secretary for Health (OASH), Public Health Service (PHS). With the elimination of the Division of Grants and Contracts, OASH, PHS, SII and name change actions became the responsibility of the individual PHS agencies. Thus, it is necessary to establish formal NIH policy and procedures for the processing of these actions.

C. **Applicability:** This policy is applicable to NIH-issued grants only. Grantee organizations having grant-related interests with other federal agencies are responsible for notifying those agencies of any change of grantee organization status.

D. References:

1. PHS Grants Administration Manual Part 131, Change of Grantee Institution
2. NIH Manual Chapter 5201, Change of Grantee Institution
3. NIH Grants Policy Statement, <http://grants.nih.gov/grants/policy/policy.htm>

E. Definitions:

1. **Successor-In-Interest** - A process whereby the rights to and obligations under an NIH grant or grants are acquired incidental to the transfer of all the assets of the grantee, or the transfer of that part of the assets involved in the performance of the grants.
2. **Name Change** - An action whereby the name of an organization is changed without otherwise affecting the rights and obligations of that organization as a grantee.
3. **Merger** - A legal action resulting in the unification of two or more legal entities. When such actions involve the transfer of assets, the procedures for the recognition of successor-in-interest will generally apply. When such actions do not involve the transfer of assets, procedures for the recognition of name change will generally apply.

F. Policy

1. The current recipient of NIH grant support is responsible for promptly notifying the awarding IC, in writing, of pending SII and name change actions.
2. When an SII or name change affects more than one IC, responsibility for processing applicable changes for all affected grants and preparing a formal letter of acknowledgment resides with either the IC with the most grant support awarded, or the IC with the most pressing need. The "lead IC" will be determined by negotiation between the Grants Management Officer (GMO) of the IC first contacted by the grantee, and the GMO of any other affected IC.

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Note: Neither a name change nor a successor-in-interest is considered a **Change of Grantee Institution**. (Please see NIH Manual Chapter 5201.)

G. Procedures for Successor-In-Interest Actions

1. The GMO of the lead IC will appoint an individual to serve as the designated NIH contact for the SII action. The contact will be responsible for the collection and dissemination of all material. The contact will also be responsible for entering and tracking information in the Successor-In-Interest and Name Change Database, (located at http://odoerdb2.od.nih.gov/cfdocs/gmac sii/sii_main.cfm) as well as for inputting the final approval date. The final approval date signifies the documents have been reviewed and approved and that awards may be issued.

2. In order to be recognized as the successor-in-interest, the "new" organization must meet the grant program's eligibility requirements. The responsibility for evaluating eligibility generally rests with the lead IC. However, an IC may re-evaluate eligibility if a particular program issue requires a different approach. For example, if the successor is in conflict with the stipulations of a program announcement as a result of an SII, an IC may choose to "grandfather" or waive the conflicting requirements of the program.

In accordance with NIH policy, administrative approval may not be given for proposed transfers from an SBIR/STTR grantee to a non-SBIR/STTR eligible organization. This prohibition may not be waived. SBIR/STTR grants may, however, be administratively transferred between two SBIR/STTR eligible organizations.

3. The grantee should be advised to submit the following documents directly to the designated NIH contact as soon as possible so that actions can be processed prospectively:

a. A letter signed by appropriate institutional officials of both the current grantee (transferor) and the successor (transferee) that includes the following:

- 1) Discussion of the pending SII and a request that the NIH modify its records to reflect the transferee as the grantee of record.
- 2) Confirmation that the transfer of assets was properly effected in accordance with applicable law.
- 3) Identification of the effective date of the transfer. (Note: There may only be one effective date.)
- 4) Information regarding the transferee's entity (EIN) number.
Will the old EIN continue to be used? If so, for what purpose?
- 5) For the transferee, provide the following:
 - Verification of compliance with applicable requirements (e.g., research misconduct as indicated in the Form PHS 398, Application for a Public Health Service Grant).
- 6) A list of all affected NIH grant(s) (active and pending) that includes the following information:
 - complete grant number (e.g., 5 R01 GM 12345-04),
 - name of principal investigator (PI),
 - budget and project periods, and
 - budgetary information on all affected grants that reflects the total direct costs (as originally recommended) plus applicable facilities

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- and administrative (F&A) costs for each budget period remaining in the grant(s). If the SII is to occur during a budget year (i.e., not on an anniversary date), the transferor must also provide estimated levels of current year direct and F&A costs remaining as of the SII effective date. The estimate may be reported on an Official Statement Relinquishing Interests and Rights in a Public Health Service Research Grant (PHS 3734), or "relinquishing statement," for each affected grant, or itemized by grant number as an attachment to the letter.
- b. Completed face pages (form PHS 398) for all affected grants showing the transferee as the applicant organization. Each face page must be signed by both the PI and the responsible business official at the transferee organization.
- c. A copy of the negotiated F&A rate agreement for the transferee.
- If applicable, explain how funding is expected to be affected due to any changes in the F&A rate.
 - If applicable, identify any shift from direct costs into F&A.
4. The successor should be advised to contact the Office for Human Research Protections (OHRP) regarding human subjects and vertebrate animal assurances. OHRP will determine if the grants involved may be covered under existing assurances, or if new assurances will need to be negotiated.
5. Upon receipt and acceptance of all required documentation, the GMO of the lead IC will send a letter of acknowledgment to the grantee institution (see sample letter). A copy of each new face page will be forwarded to the Division of Extramural Information Systems, OPERA, OER, OD.
6. The GMO of the lead IC will analyze the implications of the change in F&A rate from the original rate to the rate proposed for the new entity, and discuss such implications in a memo to all involved parties. This memo, a copy of the letter of acknowledgment, and all pertinent documents will be forwarded to the appropriate GMO(s); Division of Extramural Information Systems, OPERA, OD; Office of Financial Management, OD, Office of Research Integrity, DHHS; Office for Human Research Protections; and the Division of Financial Advisory Services, Office of Acquisition Management and Policy, OD.
7. A revised Notice of Grant Award (NGA) (Form PHS 5152) will be issued for each affected grant as a type 6 action on either the effective date of the transfer or the anniversary date of the grant, as negotiated with the grantee. The terms and conditions should refer to the aforementioned letter of acknowledgment.
- A partial year action will cite the same fiscal year as the award to the transferor. For a partial year action, a Notice of Grant Award will be issued to the transferee using the estimated unobligated direct cost balance as reported on the relinquishing statement or letter from the transferor. The F&A cost rate of the successor institution will be used to calculate the award. If a partial year transfer is to be funded using prior year funds and the F&A rate in effect at the new institution is higher than that originally provided, the Office of Financial Management, NIH, must be contacted to verify availability of funds. The transferor will receive a revised decreased Notice of Grant Award based on the estimated grant expenditures through the relinquishment date. The revised award to the transferor will also reflect revised budget/project period end dates and the deletion of any future year support.
- When a partial year action is awarded using funds appropriated from a previous fiscal year, the revised Notice of Grant Award for deobligation of funds to

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the transferor should be released simultaneously with the Notice of Grant Award for obligation of funds to the transferee.

8. The F&A cost rate of the successor institution will be used to calculate the award. If the transfer occurs during a budget period and the F&A cost rate at the new institution is higher, funds may be added to accommodate the increase in total costs. If additional funds are not available to accommodate the increase, the grantee may adjust the allocation between direct and F&A costs so that F&A costs are reimbursed at the new rate. Future year total cost commitments will be adjusted to reflect the new institution's F&A cost rate.

There are some successor-in-interest actions where the transferee is a new entity, and thus does not have a negotiated F&A cost rate at the time the successor action is completed. In those cases, it may be appropriate to negotiate the use of the F&A cost rate used to calculate the original competing award to the transferor institution as a "provisional" rate until the transferee establishes an F&A cost rate. Such negotiations would include the designated NIH contact, transferee organization, the Division of Financial Advisory Services, and staff responsible for negotiating the rate agreement. The F&A rate proposal for the new entity shall be submitted no later than three months after the effective date of the first award to the successor.

H. Procedures for Name Change Actions

1. The GMO of the lead IC will appoint an individual to serve as the designated NIH contact for the name change action. The contact will be responsible for the collection and dissemination of all material. The contact will also be responsible for entering and tracking information in the Successor-In-Interest and Name Change Database, (located at http://odoerdb2.od.nih.gov/cfdocs/gmac_sii/sii_main.cfm) as well as for inputting the final approval date. The final approval date signifies the documents have been reviewed and approved, and that awards may be issued. The GMO will also contact the Site Manager of the Grants Management Infonet (website - <http://odoerdb2.od.nih.gov/gmac/home.html>) to list the pending action in the database of SII/name change actions currently in process. Providing this information via the database will avoid duplication of effort when more than one IC is affected.

2. The grantee should be advised to submit the following documents directly to the designated NIH contact as soon as possible so that actions can be processed prospectively:

a. A letter signed by an appropriate institutional official notifying the NIH of the name change and requesting that its records be modified to reflect the name change. The letter should include the following:

- 1) Confirmation that the name change was properly effected in accordance with applicable law.
- 2) Identification of the effective date of name change. (Note: there may only be one effective date.)
- 3) Information regarding entity (EIN) numbers.
 - Will the organization be changing its EIN?
 - Will the old EIN continue to be used? If so, for what purpose?
- 4) A list of all affected NIH grants (active and pending) that includes the following information:
 - complete grant number (e.g., 5 R01 GM 12345-04),
 - name of principal investigator (PI), budget and project periods

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3. The grantee should be advised to contact the Office for Human Research Protection, HHS, regarding human subjects and the Office of Laboratory Animal Welfare, OER, for vertebrate animal assurances. These two offices will determine if the grants involved may be covered under existing assurances, or if new assurances will need to be negotiated.

4. Upon receipt and acceptance of the above documents, the GMO of the lead IC will send a letter of acknowledgment to the grantee institution (see Appendix - Sample Letter). The designated NIH contact will forward a copy of the letter and all pertinent documents to the appropriate GMO(s); the Division of Extramural Information Systems, OPERA, OD; the Office of Research Integrity, DHHS; the Office of Human Research Protection, DHHS; the Office of Laboratory Animal Welfare, OD; and the Office of Financial Management, OD.

5. It is not necessary to revise the active NGA to reflect the "new" name, but the letter of acknowledgment should be placed in the official grant file. The NGA for the next budget period, if any, will reflect the new name of the grantee organization, and the new EIN, if applicable. The terms and conditions should refer to the aforementioned letter of acknowledgment.

I. Records Retention and Disposal

Documentation of SII and name change actions will be placed in the official file(s) of each affected grant. Records retention and disposal requirements for the official grant file can be found in the NIH Manual 1743, "Keeping and Destroying Records," Appendix 1, item 4000-B-1. Also, refer to 4000-A and 4000-D-3 of NIH Manual 1743 for additional information.

NIH e-mail messages. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

J. Management Controls

The purpose of this manual issuance is to state the basic requirements for the formal recognition of a new grantee organization as the successor-in-interest to assets included in NIH grant-supported activities, and formal recognition of a name change that does not affect the rights and obligations of the grantee.

1. The Office Responsible for Reviewing Management Controls Relative to this Chapter: The Division of Grants Policy (DGP), Office of Policy for Extramural Research Administration (OPERA), Office of Extramural Research (OER), is accountable for the method used to ensure that management controls in grants administration are implemented.

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2. Frequency of Review: Ongoing reviews will occur as scheduled or on an ad hoc basis.

3. Method of Review: Working with the NIH Grants Management Advisory Committee (GMAC), DGP/OPERA is developing an NIH internal grants management compliance model (GMCM). The model will address: 1) the importance and expectations resulting from the formalization of roles and responsibilities in the grant award process; 2) the necessity of developing and maintaining an expert grants management staff trained and certified in a formal certification process; 3) the currency of NIH grants policies and procedures; and 4) the development of a management culture with zero tolerance for noncompliance with established requirements.

The GMCM will contain a review component to ensure that management controls in grants management are in place. Reviews of NIH awarding components will utilize a review protocol designed for this purpose and will occur as scheduled or on an ad hoc basis as a result of specific policy, operational or I/C issues. The purpose of the reviews will be to determine, among other things, the level of compliance with established policies and procedures and to ascertain how well they are achieving their desired effects. OPERA will issue reports of findings and recommendations resulting from the reviews to I/Cs for appropriate action. Common issues will be brought to the GMAC for resolution and corrective action. Day-to-day oversight issues will be brought by NIH grants management staff to the attention of DGP/OPERA and the GMAC for discussion and resolution.

The Director, OPERA, is routinely apprised of any difficulties in the IC implementation of policy and, depending upon the nature and extent of problems, may recommend additional policy guidance or training for grants management staff.

4. Review Reports are Sent to: The DDER and the Director, OPERA, OER.

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Appendix

Date: 9/15/00

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Issuing Office: OER/OPERA

**5205 – Successor-In-Interest and Name Change Agreements
Sample Letter**

Date

[NAME]

[ADDRESS]

Our Reference: [GRANT #]

Dear [AUTHORIZED INSTITUTIONAL OFFICIAL]:

This letter is in reference to the documentation submitted by [] relating to the [NAME OF INSTITUTION]'s recent successor-in-interest agreement. This letter serves to acknowledge the Institute's/Center's receipt and acceptance of these documents.

We have forwarded a copy of these documents to the National Institutes of Health's (NIH's) Office of Policy for Extramural Research Administration to reflect these changes in the NIH IMPAC System and have notified appropriate NIH awarding components.

The current Notices of Grant Award will not be revised to reflect the successor-in-interest for your organization. Subsequent Notices of Grant Award, if any, will reflect the change.

If you have any questions or need further information, please contact me at telephone number (301) xxx-xxxx, fax number (301) xxx-xxxx, or the following email address: [].

Sincerely,

[NAME OF GMO]
Grants Management Officer

cc: [NAMES]